IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

WP(C).No. 17840 of 2007(W)

RCRP.1/2005 of DISTRICT COURT, KOLLAM
RCP.16/1999 of RENT CONTROL COURT, KOLLAM
RCA. 31/2000 of RENT CONTROL APPELLATE AUTHORITY, KOLLAM

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PETITIONER:

ADV.A.R.AYYAPPAN PILLAI, AMMA VEEDU,
CUTCHERY WARD, KOLLAM.

BY ADV. SRI.BECHU KURIAN THOMAS

RESPONDENTS:

1. MOHANA CHANDRAN PILLAI @ MOHANAN PILLAI,
BUSINESS IN SHOP NO.MC 767, EAST OF COLLECTORATE,
FROM MOONNAM KIZHAKKATHIL VEEDU, KUREEPPUZHA
CHERRY, THRIKKADAVOOR VILLAGE, KOLLAM.

2. PADMANABHA PILLAI, S/O.MOHANAN PILLAI,
DO. DO.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

W.P.(C)No. 17840 of 2007 W

JUDGMENT

Balachandran, J.

The petitioner is the landlord and the respondents are the tenants of the building bearing No.M.C. 767 of Kollam Municipality. The said building was the subject matter of eviction petition filed as R.C.P.No.16/99 on the file of the Rent Control Court, Kollam. The claim for eviction was rejected by the rent Control Court. But, in R.C.A.No.31/00 filed by the petitioner, the appellate authority granted eviction allowing the appeal. The tenant preferred revision before this Court and that was dismissed vide Exhibit P2 order. The tenant, thereupon, preferred Special Leave Petition before the Honourable Supreme Court. During the pendency of the Special Leave Petition, it is submitted, at the instance of the counsel on either side, the parties settled the matter

amicably and the terms of settlement were made part of the order of the Apex Court and the said order is Exhibit P3. The terms of the compromise set out in Exhibit P3 are as follows:

> "1. The petitioners will surrender 4 feet portion of door No.767 on the southern side so that there will be a passage to the respondent's building on the eastern side, of a width of fourteen feet north south measured from the northern wall of door No.765.
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> 2. The demolition of the surrendered area will be carried out by a Commissioner appointed by the Rent Control Court. The new wall on the southern side of door No.767 shall also be constructed under the supervision of the said Commissioner.
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> 3. The demolition and reconstruction of the wall shall be carried out on or before 31st January, 2005 for which purpose the petitioner will render all necessary help and co-operation. The

expenses of demolition and reconstruction as reported by the Commissioner shall be borne in moities by the petitioners on the one side and the respondent on the other. If either spends more than what he is bound to, the other party shall reimburse for the excess amount without any delay.

4. The petitioners may continue to remain in possession of the remaining area of door No.767 on the same terms as at present without any entry from the widened passage on southern side subject to the mutual rights and obligations of landlord and tenant."

2. In terms of the settlement arrived at as above, a Commissioner was deputed and four feet width portion from the tenanted premises bearing Door No.M.C.767 was surrendered and left out to be used for widening the pathway to the house of the petitioner. It is the grievance of the petitioner now that by such surrender the width of the pathway could be increased only 12.25 feet and not 14 feet.

The petitioner, therefore, filed E.A.No.112/05 in E.P.No.180/02 in R.C.P.No.16/99 seeking for an order directing the tenant to surrender more portions of the tenanted premises so as to have the width of the pathway to his house increased to 14 feet. The application was dismissed by the Rent Control Court holding that causing the tenant to surrender more portion than a portion to the width of four feet, would be against the terms of the settlement. Copy of the said order is Exhibit P5. W.P.(C)No.14508/05 was filed by the petitioner assailing the said order. The said writ petition was dismissed vide Exhibit P6 judgment of this Court, refusing to invoke jurisdiction under Articles 226 and 227 of the Constitution, especially in view of the provision for revision provided under Section 14 of the Kerala Buildings (Lease and Rent Control) Act against Exhibit P5 order. Thereafter, the petitioner filed R.C.R.P.No. 1/05 before the District Court, Kollam challenging Exhibit P5 order and that also was dismissed vide

Exhibit P8 order. Hence, this writ petition by the aggrieved petitioner/landlord.

3. The argument that is advanced by the learned counsel for the petitioner is that the essence of the settlement was that by the surrender of four feet width of land on the southern side from the tenanted premises, the petitioner/landlord should get a width of 14 feet for the pathway on the southern side of the scheduled building, which leads to his house, so as to enable him to take vehicles to his house and that by the surrender of four feet from the tenanted premises, he is getting only a 12.25 feet width pathway to his house. The terms of Exhibit P3 settlement extracted above do not show that the tenant will surrender sufficient portion so as to enable the petitioner to form passage of 14 feet width. But, on the other hand, the agreement was only that the tenant will have to surrender four feet width portion from his tenanted premises on the northern side of the pathway of the petitioner. Obviously, the petitioner/landlord

might have thought that that would be sufficient to have the width of his pathway increased to 14 feet. If at all the need of the petitioner/landlord was to have a 14 feet width pathway to his house and that was agreed to by the respondents/tenants, certainly, that should have been so specifically mentioned in the terms of the compromise. The difficulty has arisen probably because the petitioner had not cared to ascertain before arriving at a settlement as to what exactly will be the width from the tenanted premises to be surrendered by the respondents so as to have the width of his pathway enlarged to 14 feet. For this fault on his part, he has to blame himself. As far as the tenant is concerned, it is submitted that he is having, at present, after surrender of four feet portion of the tenanted premises, only the balance portion of the building, which is having about 5 ½ feet width at portions and only 4 ½ feet width at certain other portions and that, if, as desired by the petitioner, 1.75 feet width also is to be

surrendered, the portion of the tenanted premises in his possession will be reduced further to such an extent that the building cannot be used for his business at all. In the circumstances of the case and in view of the terms of the compromise agreed to between the parties, which is extracted above, we are of the opinion that the petitioner/landlord is not entitled to have any more extent got surrendered from the respondents/tenants than the four feet width portion that has already been got surrendered.

This writ petition, in the circumstances, is devoid of merit and is, hence, dismissed.

(J.B.Koshy, Judge)

19th June, 2007

(K.P.Balachandran, Judge)

tkv